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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,611	09/22/2000	Douglas G. Macnair JR.	16356.548 (DC-02456)	1455
27683	7590	11/10/2003	EXAMINER	
HAYNES AND BOONE, LLP 901 MAIN STREET, SUITE 3100 DALLAS, TX 75202			CHAVIS, JOHN Q	
			ART UNIT	PAPER NUMBER
			2124	

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/668,611

Applicant(s)

MACNAIR ET AL.

Examiner

John Q. Chavis

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-4 and 9-10 recites the limitation "the image" in the preamble of the claims.

There is insufficient antecedent basis for this limitation in claims 2 and 9. The claims dependent on claims inherit the defects of its respective parent claim.

### ***Drawings***

3. The drawings are objected to because copy marks exist and lines are unevenly dark. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-5, 7-11 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Daynes et al. (2002/0013939).

<u>Claims</u>	<u>Daynes</u>
1. A method of installing software comprising:  receiving a storage device;  performing a first phase of installing programs onto the storage device;  configuring a first setup process to determine at least one directory on the storage device for copying contents of a program;  performing a second phase of installing programs onto the storage device; and  configuring a second setup process to cause a program to be integrated into an operating system.	See the title and abstract of the invention.  See program source 22 on page 3 sect 0059 and fig. 2. Also, see destinations 21 and 27 of fig. 2.  See the install and customize phases of Daynes on page 3 sects. 0047-0049  See sect. 0059, which indicates that references to code portions are determined (i.e. directories). See also sect. 0070, which indicates that new directories can be created, if necessary.  See the bind and activation phases, page 3 sects. 0050-0057.  See sect. 0067-0068, which indicates some of the types of packages (programs) that are binded (integrated) into the system.
2. ...wherein the image (???) includes a final file and directory structure.	These features are inherent in the setup and customization features above. Although, unclear features are not entitled patentable weight.
3. ...creating the final file and directory structure by copying a program directly into one or more directories.	This feature is considered inherent via the cited portions for claim 2.
4. ...phases are independent	See again the phases indicated in reference to claim 1. Also see sect. 0100.

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5. ...using switches to...separately performed.

Daynes system functions substantially similar to switches; since, it is clear that the completion of one phase signals the start of the next phase, sects 0102-0117 and again see 0100.

In reference to claims 7, see the rejection above in view of claim 5.

As per claims 8-10, see the rejection of claims 1-3.

The features of claim 11 are taught via claim 5.

Claims 13 is rejected as claim 7.

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5-6 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daynes in view of the applicant's choice of design of utilizing switches to implement phases.

#### Claims

5. ... using switches to...separately

#### Daynes/Design Choice

Although Daynes does not specifically indicate that switches are utilized in his system, he provides for a similar functionality, as indicated above. The applicant mentions the utilization of switches to perform certain functionality on page 13. However, none of the details of the function is indicated. Therefore, it is considered that the applicant relies on what is known in the art to provide the specific details of this feature. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the

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art at the time of the invention to enable Daynes system with the features that are already known in the art for providing switches to enable certain features; since, the feature would enable control of specific functions and enable separation of functionality to ensure that one process is allowed to complete its execution before enabling the second process, which may rely on results from the first to execute.

Assuming that no support is provided for multilingual users on a Web server, sect. 0137. The multilingual support (also, not clearly defined in the specifications on page 13 is considered to rely on what is known in the art for enablement) via switches are also considered a choice of design; since, a person of ordinary skill in the art at the time of the invention would have been motivated to provide the feature to enable a more user friendly system. The feature would have been obvious to a person of ordinary skill in the art to ensure that support is provided for users regardless of their origin. The switching feature is discussed above.

As per claims 11-12, see the rejections of claims 5-6 above.

### ***Conclusion***

8. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Q. Chavis whose telephone number is 703-305-9665. The examiner can normally be reached on 8:30 am-5:00 pm Est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on 703-305-9662. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-3900.

Jqc  
November 6, 2003



JOHN CHAVIS  
PATENT EXAMINER  
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